

BILL ANALYSIS

S.B. 220
By: Birdwell
Pensions
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Created in 1937, the Office of Fire Fighters' Pension Commissioner performs two basic activities: monitoring and assisting 122 individual local pension plans organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA), and administering a separate statewide system for more than 200 volunteer departments, known as the Texas Emergency Services Retirement System (TESRS). A separate Governor-appointed Board of Trustees sets policy for the system and manages the fund's assets.

The Office is subject to the Sunset Act and will be abolished September 1, 2013, unless continued by the Legislature. As a result of its review of the Office, the Sunset Commission recommended abolishing the Office, setting up TESRS as a separate entity with its Board having the authority to appoint an executive director, and making other statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Office of Fire Fighters' Pension Commissioner is transferred to the Texas Emergency Services Retirement System Board of Trustees in SECTION 5.01 of this bill.

ANALYSIS

Abolishes the Office and requires the Pension Review Board to provide assistance to TLFFRA pension plans.

S.B. 220 abolishes the Office and its functions related to local pension plans under TLFFRA, including the authority to collect reports, the Commissioner's role in appeals, and the authority to conduct seminars or workshops. The bill repeals sections of the Texas Local Fire Fighters' Retirement Act related to the Commissioner's responsibilities under that Act and makes various other technical and conforming changes in TLFFRA and to other laws to remove references to the Commissioner. The bill also deletes references to the Commissioner in TLFFRA relating to filing notice with the Secretary of State about an Internal Revenue Service determination on certain pick up contributions for employees.

S.B. 220 also requires the State Pension Review Board (PRB) to provide technical assistance, training and information to members of the boards of trustees of TLFFRA plans. The training must be designed to meet the specific needs of those board members, including members of small-to-medium-sized plans. The bill requires PRB, to the extent resources are available, to designate one person to specialize in providing the required assistance, training, and information to these TLFFRA plans. The bill also deletes a requirement for TLFFRA boards to submit their investment policies to the Commissioner and instead amends statute to require TLFFRA plans to submit these policies to PRB.

S.B. 220 also specifies that a tuition exemption for students enrolled in a fire science curriculum applies to a student who is an active member of a volunteer fire department under either TESRS or TLFFRA and holds other specified certifications, instead of the current requirement to be an active member of a volunteer department as defined by the Commissioner who also holds the

other specified certifications. The bill also contains a nonsubstantive redesignation of two versions of sections in the Education Code made necessary to make conforming changes in law to eliminate references to the Commissioner.

S.B. 220 provides for the abolishment of the Office on September 1, 2013 and provides for the transfer of powers, duties, and obligations; property and records; rules; appropriations; and hearing appeals with regard to TESRS and TLFFRA. The bill also provides for the Governor to appoint a person to complete these transfers if they are not completed by September 1, 2013, and provides for the Attorney General to continue any proceeding involving the Office that is pending on the bill's effective date.

Provides for TESRS to appoint an executive director, allows a retiree to serve on the TESRS board, and makes TESRS subject to Sunset review.

S.B. 220 eliminates the Commissioner's role in administering TESRS and deciding appeals of benefit decisions, and requires the TESRS board to appoint an executive director to administer that system by September 1, 2013. The bill replaces references to the "commissioner" in TESRS statute with "executive director," and in some instances with "state board," according to the responsibility referenced. The bill specifies that at least five instead of the current requirement for six trustees to be active members of TESRS, and that one trustee may be a retiree of the system. The bill makes the TESRS Board subject to Sunset review but not abolishment in 2025 and every 12 years thereafter.

Removes the Commissioner's authority to hear TLFFRA and TESRS appeals on benefit decisions and provides for the Pension Review Board to refer TLFFRA appeals for hearing.

S.B. 220 amends statute to remove the Commissioner's authority to hear appeals of local board decisions under TLFFRA and provides for the State Office of Administrative Hearings (SOAH) to decide the cases instead. The bill amends statute to require TLFFRA participants to file with PRB a copy of the notice of appeal that is delivered to a TLFFRA board. The bill also requires PRB to refer the matter to SOAH as soon as practicable and specifies that the sole function of PRB is to refer these appeals to SOAH, with SOAH having exclusive authority to decide the appeals.

S.B. 220 amends statute to remove the Commissioner from the appeals process for benefit decisions under TESRS, and instead makes the TESRS Board the decision maker in these appeals. The bill provides for final appeals decisions to be subject to judicial review under the substantial evidence standard.

Requires the TESRS Board to adopt a contracting policy.

S.B. 220 requires the TESRS Board to adopt a written policy on contract management and oversight and provides minimum requirements for the policy.

Requires the TESRS Board to report additional information if significant changes to the fund's actuarial valuation occur.

S.B. 220 requires the TESRS Board to report to the State leadership, Legislative Budget Board, and Pension Review Board if the TESRS fund experiences significant changes to its actuarial valuation or contributions or benefits, or if its actuarial valuation is incorrect. The report must cover the effect of alternative contribution and benefit structures on the actuarial valuation, including changes in the State's contribution. The bill specifies that the State Board must determine the meaning of "significant change," and includes circumstances to be considered in this determination.

Requires the TESRS Board to report more clearly in the fund's actuarial valuation on the effect of state contributions to the fund.

S.B. 220 provides that the TESRS actuarial valuation must include a clearly shown analysis on the impact of assuming both a maximum state contribution and no state contribution to the fund, including the impact on the period needed to amortize the unfunded liability.

Requires the TESRS Board to conduct certain actuarial audits on a regular basis.

S.B. 220 requires the TESRS Board to conduct actuarial audits and experience studies at least every 5 years, but does not require them to be conducted concurrently.

Applies several Sunset across-the-board recommendations.

S.B. 220 adds standard Sunset language prohibiting a person from serving as a TESRS Board member or high-level agency employee if the person, or the person's spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of emergency services, firefighting, or public retirement systems. The bill also prohibits a person from serving as a trustee or general counsel to the State Board if the person is registered as a lobbyist. The bill provides that these changes do not apply to members of the Board serving on the Board immediately before September 1, 2013, and allows them to serve out the remainder of their terms.

S.B. 220 also adds standard Sunset language requiring members of the TESRS Board to complete specified training before assuming their duties; requiring the TESRS Board to separate its policymaking duties from the system's management functions; requiring the TESRS Board to give the public a reasonable opportunity to present issues under the Board's jurisdiction; and requiring the TESRS Board to maintain information on all complaints, make information available on complaint procedures, and notify the parties about the status of complaints.

S.B. 220 repeals the following statutory provisions:

- Sections 802.103(c) and 861.001(3), Government Code
- Sections 54.208 and 54.2081, Education Code
- Vernon's Civil Statutes, Article 6243e, 18(g)
- Vernon's Civil Statutes, Article 6243e, 18A
- Vernon's Civil Statutes, Article 6243e, 21
- Vernon's Civil Statutes, Article 6243e, 21A
- Vernon's Civil Statutes, Article 6243e, 31(c)

EFFECTIVE DATE

September 1, 2013.